

The prisoner was convicted by the learned President of the Sessions Court of the offence of cheating, contrary to section 420 of the Penal Code.

The brief facts of the case were that the prisoner produced a "dud" cheque to the complainant, a female shopkeeper, with whom the prisoner and/or his brother ran a credit account, and on the strength of that cheque dishonestly induced the complainant not only to accept it in settlement of the account owing but also to pay over to him \$426 in cash being the balance shown on the face of the cheque in excess of the amount to be settled.

It is apparent from the record that the prisoner put forward in his defence every conceivable lie his distorted imagination could conjure up and attempted to blacken the character of practically every witness called for the prosecution.

The learned President sentenced him to one day's imprisonment and further imposed a fine of \$1,426, or one year's imprisonment in default of payment. Out of the fine, if paid, \$426 was to be paid to the complainant as compensation.

It was, and is, clear that the prisoner was not in a financial position to raise such a sum of money, and the imposition of such a fine in such circumstances was virtually tantamount to a peremptory sentence of twelve months' imprisonment. The prisoner is aged 26, and had never been in trouble before. Making every allowance for the despicable nature of the offence committed the sentence is, in my view, excessive.

The prisoner has now served approximately five weeks of his sentence. The fine will be reduced to one of \$500 or four months' imprisonment in default of payment. Out of the fine, if paid, \$426 will be paid as compensation to the complainant.

Order accordingly.

S. E. MIZRAHIE v. STANTON NELSON & CO. LTD.

[C. A. (Whyatt C.J., Tan Ah Tah and Wee Chong Jin JJ.)
April 25, 1958]

[Singapore — Appeal No. 15 of 1957]

Contract — Gaming and Wagering contract — Rubber Dealers Ordinance (Cap. 199), s. 3 — Forward contracts — Civil Law Ordinance (Cap. 24), s. 6.

The respondents, who were plaintiffs in the Court of the first instance were rubber brokers and members of the Singapore Chamber of Commerce Rubber Association in the class of brokers. They claimed damages from the appellant for breach of several contracts in writing for purchase and sale of rubber or in the alternative the balance of expense incurred by them and

A agreed, alternatively reasonable remuneration earned by them in respect of services rendered as the defendant's brokers.

All the contracts in this case, subject to a few exceptions were F.O.B. contracts involving delivery at the time they were made.

B The appellant raised the defence of illegality which was based on two grounds: (i) that the appellant was not licensed under the Rubber Dealers Ordinance to purchase rubber; and (ii) that the contracts were void as gaming and wagering contracts under section 6 of the Civil Law Ordinance.

C The Court of first instance held that the words "purchase rubber" as used in section 3 of the Rubber Dealers Ordinance refer to present purchases and not to forward or executory contracts, and that therefore the defendant not being a holder of a licence under the Ordinance did not render the contracts illegal. It was also held that the contract was not a wagering contract.

On appeal, the Court of Appeal reversing the decision reported in (1958) M.L.J. 45,

Held: the contracts were not real contracts for the sale of rubber, but were merely colourable transactions, to enable the appellant to gamble in differences, and were void.

D *Thacker v. Hardy*⁽²⁾, *Forget v. Ostigny*⁽⁴⁾, *Weddle, Beck & Co. v. Hackett*⁽¹⁾, *Woodward v. Wolfe*⁽⁵⁾, *Syn Thong & Co. v. Tong Joo (Hoo) & Co.*⁽⁶⁾, and *Baker v. Sharma*⁽⁷⁾ distinguished.

No opinion was expressed as to whether the contracts were void because the appellant was not licensed to purchase rubber under the Rubber Dealers Ordinance.

E *Cases referred to:—*

- (1) *Weddle, Beck & Co. v. Hackett* (1929) 1 K.B. 321.
- (2) *Thacker v. Hardy* 4 Q.B.D. 685.
- (3) *Universal Stock Exchange v. Strachan* (1896) A.C. 166.
- (4) *Forget v. Ostigny* (1895) A.C. 318.
- (5) *Woodward v. Wolfe* (1936) 3 All E.R. 529.
- (6) *Syn Thong & Co. v. Tong Joo (Hoo) & Co.* (1929) S.S.L.R. 39.
- (7) *Baker v. Sharma* K.L. — Civil Suit No. 164 of 1936 — unreported. 3 M.L.J. 15.

COURT OF APPEAL, appeal from the decision of Buttrose J. reported in (1958) M.L.J. 45.

H *S. H. D. Elias* for the appellant-defendant.

C. H. Withers-Payne for the respondent-plaintiffs.

The judgment of the Court of Appeal was delivered by

I **Whyatt C.J.** : — This is an appeal from a judgment of Mr. Justice Buttrose in which it was held that the plaintiffs were entitled to recover from the defendant the sum of \$219,590 by way of indemnity for expenses incurred and for commission earned while acting as the defendant's brokers for the purchase and sale of rubber F.O.B. Singapore. The

defendant resisted the plaintiffs' claim on two broad grounds: first, he contended that the contracts which the plaintiffs entered into on his behalf with third parties were in no sense genuine contracts for the sale and purchase of rubber F.O.B. Singapore but were merely colourable transactions entered into for the purpose of enabling him to gamble in differences and as such unenforceable under section 6 of the Civil Law Ordinance; secondly, he argued that the contracts were in any event illegal and void as he did not hold a licence under the Rubber Dealers Ordinance to purchase rubber. The issues which arise for determination in this appeal are, therefore, of considerable importance, particularly as the method of transacting business in the present case is said to be typical of a large volume of business carried out daily on the Singapore rubber market which is one of the largest rubber markets in the world.

Certain features of the Singapore rubber market are somewhat unusual and it will be convenient, before examining in detail the transactions we are concerned with in this case, to describe in outline the organisation and method of doing business in this market. Although there is a very active market in Singapore, there is no Rubber Exchange in the sense that there is a regular meeting place where brokers meet jobbers to transact business on behalf of their clients; but there is a Rubber Association, named the Singapore Chamber of Commerce Rubber Association to give it its full title, consisting of approximately 160 members and associate members, which regulates the transaction of business by means of rules, bye-laws and conditions of sale approved by the Association. The members and associate members are divided into four classes, namely, dealers, estate selling agents, manufacturers' buying agents, and brokers; and it is laid down in the rules that the members of the first three classes must be commercially interested in rubber and that the members of the fourth class, namely brokers, must only act as intermediaries between sellers and buyers. The plaintiffs were members of the fourth class.

The method by which brokers transact business is of great importance in this case and it is necessary to refer to it in some detail. There is a room in the brokers' office, known as the Trading Room, furnished with a table around which sit the brokers employed by the firm, and equipped with numerous telephones. In the plaintiffs' Trading Room, there were six brokers, fifteen telephones and seventy direct lines. According to the evidence of the plaintiffs' director, the brokers are on the telephone all the time, and sometimes all the telephones are ringing at once; to quote his words,

A "the noise is terrific—six people shouting." At the other end of the telephones, of course, are the brokers' clients, the persons wishing to buy or sell rubber. When a call is received from a client offering to buy or sell at a particular price, the broker announces the fact to the rest of the brokers at the table who at once try to find a corresponding seller or purchaser by telephoning to their various clients. Usually in a matter of minutes, sometimes even in a matter of seconds, one of the brokers announces that he has found a seller or purchaser as the case may be and the two brokers then inform the person at the table who is in charge of the contract book of the particulars of the contract. A rough entry is made forthwith in the contract book and later the book is sent to the outer-office where contract notes are prepared and despatched to the buyer and seller. The process of finding a corresponding buyer or seller after an offer is received in the Trading Room is called, not inappropriately, marrying or wedding the contract. Sometimes, according to the evidence of the plaintiffs' director, a contract cannot be wedded by the brokers immediately and in that event the brokers endeavour "to wed at the earliest possible moment".

E Such then is the method of transacting business adopted by brokers on the Singapore rubber market. There is, however, one further aspect of their business which is of the utmost importance in this case and should be mentioned at this stage. Although the contract wedded by a broker may be a contract between parties who are members of the Rubber Association, as, for instance, between an estate selling agent and a manufacturers' buying agent, this is not necessarily so in every case. On the contrary, it may happen, indeed it frequently does happen, that both the parties to a contract wedded by a broker are members of the public who are not in any way commercially interested in rubber. As the plaintiffs' director said in evidence "The factors I take into consideration when deciding whether or not to accept a customer are whether the customer could be considered a person who would stand by his contract financially, ethically and morally It would not affect my decision whether or not he was a member of the Singapore Chamber of Commerce Rubber Association or the nature of the business he carried on at the time. I would accept a dentist, a doctor, a lawyer or other professional man." Thus a broker sitting at the table in the Trading Room may receive a telephone call from a doctor offering to buy a quantity of rubber at a particular price F.O.B. Singapore; the broker announces the fact to the other brokers in the Trading Room and in a matter of seconds, one of them may obtain an offer from a dentist to sell the same quantity of

rubber at the same price; the contract between the doctor and the dentist is, thereupon, duly wedded and a rough entry made by the person in charge of the contract book. On other occasions, the contract may be wedded, at all events in its initial stage, between a member of the public and a seller or a buyer who is a member of the Rubber Association; thus, for example, an offer by a lawyer to sell a quantity of rubber at a certain price might be wedded by his brokers to a contract with an agent of a tyre manufacturer to buy the same quantity of rubber at the same price. The contracts thus entered into through brokers who are members of the Rubber Association fall, therefore, into three possible categories: first, a contract may be wedded between two members of the Rubber Association, secondly a contract may be wedded between two members of the public, and thirdly a contract may be wedded between a member of the public and a member of the Rubber Association.

It is against this background that we now turn to consider the actual contracts we are concerned with in this case and we mention at the outset that out of a total of 71, 27 contracts were wedded between the defendant and other members of the public and 44 contracts were wedded initially between the defendant and members of the Rubber Association; the former may, for convenience, be called Category A contracts, and the latter Category B contracts. We propose to deal first with Category A contracts but before doing so, it will be helpful to state the principles to be borne in mind in deciding whether a contract for the purchase or sale of a commodity, whether it be rubber or stocks and shares, is a wagering contract.

The matter has been considered in numerous cases, the facts and circumstances of which vary considerably, but it appears to us that the question posed by Swift J. in *Weddle, Beck & Co. v. Hackett*⁽¹⁾ is very similar to, if not identical with, the question which has to be considered in the present case. "The question which seems to me to call to be determined," said Swift J., "is whether the contracts formed between the jobbers and the defendant through the agency of the plaintiffs were or were not wagering contracts. If they are wagering contracts, then they are void and the plaintiffs should not have paid money under them to the third parties and cannot recover it from the defendant on whose behalf they paid."

The same question may be expressed in terms of a Category A contract thus: were the contracts which were formed between the defendant and other members of the public through the agency of the plaintiffs wagering contracts? The answer to this question depends upon whether they were "real contracts" (to

adopt the expression used in *Thacker v. Hardy*⁽²⁾) for the purchase and sale of rubber, or whether they were simply gambling transactions intended to end in the payment of differences. As Lord Halsbury expressed it in *Universal Stock Exchange v. Strachan*⁽³⁾ "if the real meaning of the parties is this, that there is to be only a payment of differences, what is it but a gaming or wagering transaction . . ." The Lord Chancellor went on to say in that case that if he had been on the jury he would have come to the conclusion that the contracts were wagering contracts but that he was not under the necessity of trying the question as if he was sitting on the jury because the jury had found that it was a gambling transaction upon evidence which seemed to him extremely satisfactory.

It will be seen, therefore, that in the ultimate analysis it is for this Court sitting as Judges of fact, to decide whether on the evidence these contracts were real transactions of commerce or mere gambling in differences. In deciding this question of fact it is, of course, necessary to consider a number of circumstances, among which perhaps the most important are the status of the parties and the terms of the contractual documents. So far as Category A contracts are concerned, the status of the parties is remarkable. On the one hand, there is the defendant, a second-hand car dealer, in no way commercially interested in rubber. On the other hand, there are the third parties with whom the defendant entered into contracts through the agency of the plaintiffs: there is a Mrs. K. H. Tan, occupation unknown; a Mrs. Mani, the wife of a journalist; a Mrs. Nair, occupation and address unknown. The information about the other persons who contracted as third parties is even more meagre; all that can be said is that they were not members of the Rubber Association and did not hold licences under the Rubber Dealers Ordinance to deal in rubber. It is in regard to the status of the third parties that the Category A contracts differ fundamentally from the contracts in the many reported cases where the Courts have negatived a defence of gaming. In *Thacker v. Hardy*⁽²⁾ the third parties were jobbers on the London Stock Exchange; in *Forget v. Ostigny*⁽⁴⁾ likewise the third parties were members of a stock exchange; the same was true of the third parties in *Weddle, Beck & Co. v. Hackett*⁽¹⁾; in *Woodward v. Wolfe*⁽⁵⁾ the third parties were members of the Liverpool Cotton Association. In all these cases the third parties were members of an Exchange or an Association established to regulate the buying and selling of the commodity which was the subject matter of the contract and as far as the third parties were concerned, the contracts were real transactions of commerce. There is, however, no similar feature in

any of the Category A contracts, and we think the reasonable inference is that the third parties in the Category A contracts were no more interested in giving or taking delivery of rubber than was the defendant himself.

But the matter does not rest there. The contractual documents issued in respect of Category A contracts by the plaintiffs to the defendant and to the third parties after wedding the contracts on the telephone, re-inforce the view that these were not real transactions of commerce. They state that the sale is "F.O.B. Malayan Ports" and contain a term to the effect that the transaction is subject to the F.O.B. conditions of sale of the Singapore Chamber of Commerce Rubber Association. The F.O.B. conditions of sale of the Rubber Association contain detailed rules as to the procedure to be followed by a seller who tenders rubber to his buyer. He must obtain a document called an F.O.B. Tender from the Association, and, after filling in particulars of the contract, he must then register the Tender with the Clearing House of the Association. After registration the Tender may be "circulated" for a limited time and on the 16th day of each month, there is a "Tender Clearing Day" at the Auction Room of the Association at which the names of the "Last Buyers", as they are called, are recorded in the "Registered Tenders". There are a number of other detailed rules governing the issue and disposal of Registered Tenders to which it is unnecessary to refer but one very important rule, namely, Rule 9, headed: "Tenders for Members and Associate Members Use Only" makes it abundantly clear that only members of the Rubber Association may give or receive Tenders. It follows, therefore, that although the Category A contracts are expressed to be made subject to the F.O.B. conditions of sale of the Rubber Association, these conditions, so far as they relate to the delivery of rubber, could not possibly operate since the parties to the contract are not members or associate members of the Rubber Association. Looking at these conditions, it may be said, as was said by Lord Halsbury of the terms of business in *Universal Stock Exchange v. Strachan*⁽³⁾ "the whole scheme appears . . . to be intended with great ingenuity to pretend that there is to be a real transaction and yet there is to be a payment . . . which is only reconcilable . . . with its being an unreal transaction." So also a Category A contract pretends to be a real transaction but it contains terms which are only reconcilable with its being an unreal transaction.

Accordingly, therefore, we reach the conclusion that the Category A contracts were not real transactions of commerce for the purchase and sale of rubber but

A were entered into through the agency of the plaintiffs for the purpose of enabling the defendant to gamble in differences. Consequently these contracts are void and the plaintiffs cannot recover from the defendant the money they have paid under them to third parties or any commission on them.

B We now turn to consider Category B contracts, but before attempting a legal analysis of these transactions it is desirable to describe in detail not only the method by which the Category B contracts were entered into through the agency of the plaintiffs but also the methods by which the plaintiffs purported to perform them. In a typical case, a telephone call would be received in the plaintiffs' Trading Room from the defendant offering to purchase a quantity of rubber at a certain price for the current month's delivery. The offer would be announced to the other brokers at the table and after making telephonic enquiries one of them would announce that he had a seller at the defendant's price and give the name of one of the large rubber dealers who are members of the Rubber Association. The contract would then be wedded by sending out contract notes to the defendant and to the rubber dealer who is, of course, commercially interested in rubber and ready and able to perform his side of the bargain by delivering a "Registered Tender" to the defendant in accordance with the Rubber Association's F.O.B. conditions of sale. But, of course, the defendant, not being a member of the Rubber Association, cannot accept a Registered Tender; neither can the rubber dealer deliver a Registered Tender to him as that would be contrary to his obligations as a member. In other words, the contract formed between the parties by the agency of the plaintiffs cannot be performed without committing a breach of the F.O.B. conditions to which it is subject. G The wedding arranged by the plaintiffs is not even a marriage of convenience; it is a misalliance. That the plaintiffs realise this is clear from their subsequent conduct. When the rubber dealer (who is, of course, unaware that his buyer is a second-hand car salesman) delivers a "Registered Tender" to the plaintiffs in performance of his obligation under his contract, the plaintiffs do not deliver it to their principal, the defendant; but, without any reference to their principal, they divert it to another client who is a member of the Rubber Association and wishes to receive a Registered Tender for that particular month's delivery. H I

The defendant's contract to buy is, so to speak, left in the air when the third party's Registered Tender is diverted elsewhere, but this presents no inconvenience to him as he never expected to receive anything under it except a difference at the end of

the month. This he does in fact receive in the form of an account which is headed "F.O.B. Contracts — Month of . . . Set off". This account shows the difference between the buying and selling contracts (both Category A and Category B contracts) which he has entered into during the course of the month and the nett amount due or owing on the total of the month's transactions. The other clients of the plaintiffs receive similar set-off accounts, and thus all the contracts which were wedded by the plaintiffs during the course of the month are finally resolved by the payment or the receipt of the differences shown in the set-off accounts and by the delivery of Registered Tenders and payment therefor in those cases where the sellers and buyers gave and took delivery of physical rubber.

This being the method by which the Category B contracts are made and disposed of, the question to be determined is whether the plaintiffs were, in these instances, acting as agents for the defendant for the purpose of making genuine contracts with third parties. As a matter of first impression, it might appear that they were making genuine contracts, for the third parties were, in fact, rubber dealers and members of the Rubber Association. The transactions resemble, in some respects, those which were held to be genuine by Hilbery J. in *Woodward v. Wolfe*⁽⁵⁾, *supra*. The facts of that case were that a member of the public engaged a firm of cotton brokers who were members of the Liverpool Cotton Trade Association to gamble for him in futures on the Liverpool market. The brokers agreed with their client that he would not be expected to take or receive delivery of the cotton and that it was to be a matter only of the differences between the purchase and sales. As no one can buy or sell cotton futures unless he is a member of the Liverpool Cotton Trade Association, the contracts were placed by the brokers with members of the Liverpool Cotton Trade Association in accordance with the rules, regulations and usages of the Association. The client subsequently refused to pay the differences due on the contracts, contending that they were contracts by way of gaming and wagering. In dealing with this contention, Hilbery J. said: "They (the brokers) acted for the defendant to enable him to gamble and they acted in the capacity of brokers in the market in which the defendant wished to gamble in the only way in which the defendant could gamble in that market . . . Those contracts, I am satisfied on the evidence, bound him and they (the brokers) have, I am satisfied, had to meet their obligations under them . . . I come to the same conclusion as Swift J. in *Weddle, Beck & Co. v. Hackett*⁽¹⁾, which is that the plaintiffs are entitled to recover." There is, however, one

A difference between *Woodward v. Wolfe*⁽⁵⁾, *supra* and the present case which is of fundamental importance. As Hilbery J. pointed out, the only way in which the Liverpool cotton brokers could gamble for their client was placing genuine contracts with members of the Liverpool Cotton Trade Association but in Singapore brokers can and do gamble for their clients by placing contracts with members of the public, as witness the Category A contracts in the present case.

Thus a rubber broker may have two distinct classes of business, one for genuine buyers and sellers, the other for members of the public who wish to gamble. In other words he may act as intermediary between two members of the Association for the purpose of making genuine contracts, or he may act as intermediary for the purpose of making gambling contracts between two members of the public, neither of whom is commercially interested in rubber; the former may be described as contracts for "physical rubber", and the latter as contracts for "paper rubber", to adopt the expressions used in the course of this hearing. It will be seen, therefore, that the business of rubber brokers is or, at least may be, a mixed business, partly in physical rubber, and partly in paper rubber. Sometime the two classes of business overlap, at least temporarily, when a contract on behalf of a member of the public is wedded, initially, to a contract with a member of the Rubber Association as happened with the Category B contracts in this case. When this occurs, the broker proceeds, as the course of business in the present case clearly shows, to adjust the position as speedily as may be by diverting the Registered Tender which the member of the Association delivers in performance of his contract away from the member of the public who gave the order to a member of the Association who can accept delivery of a Registered Tender in accordance with the rules, bye-laws and F.O.B. conditions of sale of the Association. This in our view is the true explanation of the methods adopted by the plaintiffs for disposing of Category B contracts in this case. In other words, the Category B contracts, which initially had the appearance of genuine contracts, were so adjusted and manipulated by the plaintiffs that they became, before settling day, contracts for the payment of differences and, in the end, were indistinguishable from Category A contracts. It may be asked whether the action of the plaintiffs in diverting Registered Tenders in this way without the specific authority of their principal was in accordance with their mandate from the defendant. The learned trial Judge in his judgment said that he was satisfied that the plaintiffs' director did not know of any agreement to arrange matters so that the defendant should only pay differences

although he agreed that the plaintiffs' employee, Taylor, who conducted most of the business with the defendant, was aware of such an agreement, but, with the greatest respect, it appears to us that the only reasonable inference to be drawn from the course of business and the other facts and circumstances of this case is that the plaintiffs agreed with the defendant that he would not be required to take or give delivery of rubber and that it would only be a matter of differences between the purchases and sales. This being so, the plaintiffs were not acting contrary to the mandate given to them by the defendant but, in fact, were implementing it when they diverted Registered Tenders from him. In short they were acting as agents for the purpose of making wagering contracts on his behalf and therefore they cannot recover from him the moneys which they have expended on his behalf in pursuance of those contracts.

In case it might be thought we have not considered the case of *Syn Thong & Co. v. Tong Joo (Hoo) & Co.*⁽⁶⁾ and *Baker v. Sharma*⁽⁷⁾ (unreported) which were relied upon in the Court below in support of the view that the contracts in the present case were not wagering contracts, we would add that in our opinion those two cases are distinguishable, having regard to the findings of fact upon which the decisions were based. In the first case Stevens J. expressly rejected the defendant's evidence that there was an agreement that the rubber would not be called for and only differences dealt in but added that if such an agreement had been established to his satisfaction, he would have held that the plaintiffs could not recover. In the second case Thomas C.J. found that the contracts entered into by the brokers were genuine contracts and therefore he discarded the suggestion of gaming, as far as the brokers were concerned.

The only remaining question to be considered is whether the contracts, both Category A and Category B, were illegal by reason of the fact that at the time the plaintiffs entered into them on behalf of the defendant, he was not licensed to purchase rubber under the Rubber Dealers Ordinance. This point was considered by Stevens J. in *Syn Thong & Co. v. Tong Joo (Hoo) & Co.*⁽⁶⁾, *supra* who held that the provisions of this Ordinance did not apply to forward contracts to purchase unascertained rubber by description. In the later case of *Baker v. Sharma*⁽⁷⁾ (unreported), Thomas C.J. expressed agreement with Stevens J.'s view but his remarks were *obiter*, and when the same case came before the Court of Appeal, further *obiter dicta* were pronounced on this point. Having regard to the conclusion we have reached on the issue of gaming and wagering, any comments we might make on this matter would also be *obiter*. and

A we think it is undesirable to add to the *obiter dicta* on this point.

B Accordingly, we rest our decision upon the finding that none of the contracts placed by the plaintiffs on behalf of the defendant were genuine contracts for the delivery of rubber and that the plaintiffs agreed with the defendant that he would not be required to take or give delivery of rubber and that only differences should be payable. The contracts were, therefore, made by way of gaming and wagering and the plaintiffs cannot recover from the defendant money paid under them to third parties or any commission on them. For these reasons we are of the opinion that this appeal should be allowed with costs.

Appeal allowed.

Solicitors : Elias Bros.; Drew & Napier.

PUBLIC PROSECUTOR v. Dr. G. J. N. D'FONSEKA

[C. A. (Thomson C.J., Buhagiar J. and Sutherland Ag. J.)
June 12, 1957]

[K. L. — F.M. Criminal Reference No. 5 of 1956]

E *Penal Code, s. 197 — False medical certificate — Purpose for which it was required — Whether necessary for prosecution to prove awareness of person who issues or signs.*

F *Provident fund — Withdrawal of — Application based on medical certificate of unfitness — False certificate — Whether certificate required by law — Employees Provident Fund Ordinance, 1951, ss.13(1)(c) and 21(e) and (f) — Employees Provident Fund Rules, 1952, rr. 19(1) and 20(2)(a) and (b).*

G The points of law for the determination of the Court of Appeal in this reference are: (i) whether a certificate signed by a medical practitioner, and forwarded pursuant to Rule 20 of the Employees Provident Fund Rules, 1952 by a contributor to the Employees Provident Fund in support of an application to withdraw any amount standing to his credit in the Fund, is a certificate required by law to be given within the meaning of section 197 of the Penal Code; and (ii) whether before a person can be convicted of an offence in relation to the issuing or signing any certificate referred to in section 197 of the Penal Code it is necessary for the prosecution to prove that such person was aware of the purpose for which the certificate was required.

H Evidence led by the prosecution was to the effect that the respondent, a medical practitioner, had given three medical certificates each to the effect that the person named therein was no longer capable of being employed and not likely to be an employee again. The person named in each of the certificate gave evidence that he had not been examined by the respondent. There was evidence that when the respondent signed two of the certificates he signed them without examining any person. Use was made of these certificates to obtain from the Employees Provident Fund the return of the amount standing to the credit of the persons named in each certificate. There was no evidence to show that the respondent was aware of the purpose for which the certificates were required or of the use to be made thereof.